



January 8, 2002

Ms. Elizabeth G. Neally
Attorney for Brownsville I.S.D.
Roerig, Oliveira, & Fisher, L.L.P.
855 West Price Road, Suite 9
Brownsville, Texas 78520-8786

OR2002-0123

Dear Ms. Neally:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#157081.

The Brownsville Independent School District (the "district"), which you represent, received a request for all written documentation, agreements and/or contracts and all parties involved in the execution of the Workers Compensation Insurance Program for the September 1, 2001-02 term to include ten specific items. You state that you have released some of the requested information. You also claim that the district maintains no information responsive to request items 3, 5, and 6. You assert that the remaining information is excepted from disclosure under sections 552.104, 552.110 and 552.131 of the Government Code as well as section 101.104 of the Texas Civil Practice and Remedies Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by finding that some of the information at issue is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information which we have marked fits into the subsection (1) category for "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" and the subsection (3) category for "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." We will consider whether other law makes the information confidential.

You argue that information concerning insurance is protected from disclosure under section 101.104 of the Texas Civil Practice and Remedies Code, which provides as follows:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Tex. Civ. Prac. & Rem. Code § 101.104; *see In re Sabine Valley Center*, 986 S.W.2d 612 (Tex. 1999) (statute “prohibits discovery of insurance covering claims against a governmental unit and against its employees for which it could be liable, directly or vicariously, under the [Texas Tort Claims] Act”). We believe this discovery provision applies to the marked section 552.022 information. Furthermore, section 101.104 of the Texas Civil Practice and Remedies Code consists of other law for purposes of section 552.022(a) of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we conclude that the district must withhold from the requestor the information which we have marked.

We next consider your claims for the information that is not subject to section 552.022. You assert that section 101.104 of the Civil Practice and Remedies Code prohibits the disclosure of the information. We will assume that you bring this claim under section 552.101. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.--Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act). It does not make insurance information confidential for purposes of section 552.101 of the Public Information Act. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 “are not relevant to the availability of the information to the public”). Chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Gov’t Code §§ 552.005 (chapter 552 does not affect the scope of civil discovery), .006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552); Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) *overruled in part by* Open Records Decision No. 647 (1996) (section 552.101 does not encompass discovery privileges). We do not believe that section 101.104 makes confidential the requested insurance coverage information for purposes of section 552.101.

You also claim that the information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once

a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978). In this case, you have not shown the existence of an open bidding situation, or otherwise demonstrated how the release of the information would give an advantage to a competitive bidder. The Act requires a governmental body to explain the applicability of a raised exception. Gov't Code §552.301(e)(1)(A). Therefore, section 552.104 does not apply.

You also argue that the requested information contains proprietary information and is excepted from public disclosure under section 552.110 of the Government Code. When a third party's proprietary rights are implicated, section 552.305(d) of the Government Code requires a governmental body to notify the party of the request for an attorney general decision. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). You do not represent that any third party's section 552.110 proprietary interests would be implicated by the public release of the information at issue. Nor have you indicated that you have notified any third parties in this instance. As of the date of this letter, no entity has submitted to this office reasons explaining why any of the submitted documents should not be released. Therefore, we have no basis to conclude that the responsive information is excepted from disclosure under section 552.110 of the Government Code. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, third party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (third party must establish prima facie case that information is trade secret), 542 at 3 (1990).

You further argue that the requested information is excepted from public disclosure under section 552.131 of the Government Code. Section 552.131 provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131. However, you have not demonstrated that the district is negotiating to have a third party "locate, stay, or expand in or near the territory of" the district, nor have you provided any other information to explain the applicability of this exception to the information at issue. *See* Gov't Code § 552.131(a). As stated above, the Act requires a governmental body to explain the applicability of a claimed exception. *Id.* § 552.103(e)(1)(A). Therefore, we conclude that section 552.131 is inapplicable to the requested information. Accordingly, you may not withhold the information based on section 552.131.

In summary, the district must withhold the marked insurance information from disclosure under section 101.104 of the Texas Civil Practice and Remedies Code in conjunction with section 552.022(a) of the Government Code. However, as none of the district's raised exceptions applies to the other information at issue, the district must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

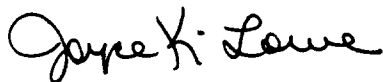
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157081

Enc: Submitted documents

c: Johnny N. Cavazos
Cavazos Insurance
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(w/o enclosures)